

IC 3-6-4.5

Chapter 4.5. Administrative Complaint Procedure Concerning Uniform and Nondiscriminatory Election Technology and Administrative Requirements Under Title III of HAVA

IC 3-6-4.5-1

Application of chapter

Sec. 1. This chapter applies after December 31, 2003.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-2

"Title III"

Sec. 2. As used in this chapter, "Title III" refers to Title III of HAVA (42 U.S.C. 15481 through 15485).
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-3

Establishment of administrative complaint procedure

Sec. 3. As required by 42 U.S.C. 15512, this chapter establishes the state based administrative complaint procedures to remedy grievances concerning uniform and nondiscriminatory election technology and administrative requirements under Title III.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-4

Remedies supplement other remedies under IC 3

Sec. 4. The remedies provided under this chapter are supplemental to any other remedies provided to an aggrieved party under this title.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-5

Procedures uniform and nondiscriminatory

Sec. 5. As required by 42 U.S.C. 15512, the procedures prescribed by this chapter must be uniform and nondiscriminatory.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-6

Filing complaint with election division

Sec. 6. As provided by 42 U.S.C. 15512, a person who believes there is a violation of any provision of Title III, including a violation that has occurred, is occurring, or is about to occur, may file a complaint with the election division.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-7

Form of complaint

Sec. 7. As required by 42 U.S.C. 15512, a complaint filed under this chapter must be written, signed, and sworn to before an individual authorized to administer an oath under IC 33-42-4.
As added by P.L.209-2003, SEC.13. Amended by P.L.98-2004,

SEC.26.

IC 3-6-4.5-8

Information required in complaint

Sec. 8. The complaint filed under section 7 of this chapter must state the following:

- (1) The name and mailing address of the person alleged to be committing the violation of Title III described in the complaint.
- (2) Whether the person filing the complaint has filed a complaint concerning the violation with a county election board under IC 3-6-5.1.
- (3) The nature of the injury suffered (or about to be suffered) by the person filing the complaint.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-9

Copies of complaint provided to commission and persons identified in complaint

Sec. 9. The election division shall promptly provide a copy of the complaint by first class mail to the members of the commission and the persons identified in the complaint.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-10

Complaint filed with county election board; suspension of state enforcement

Sec. 10. A person entitled to file a complaint under this chapter may file a complaint with the county election board where the violation allegedly occurred under IC 3-6-5.1. If a person filed a complaint under IC 3-6-5.1, the election division shall not begin enforcement procedures under this chapter regarding the complaint until the person filing the complaint files a complaint with the election division under this chapter.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-11

Complaint against co-director filed with commission chair; duties of commission chair

Sec. 11. This section applies if the complaint alleges that either co-director of the election division has committed the violation. The aggrieved person shall file the complaint with the chair of the commission. The chair of the commission shall perform the duties otherwise performed by the election division concerning a complaint.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-12

Consolidation of complaints

Sec. 12. As permitted under 42 U.S.C. 15512, the election division (or commission) may consolidate complaints filed under this chapter.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-13

Preliminary determination of validity of complaint; dismissal; notice of dismissal

Sec. 13. The election division shall determine whether a complaint filed under this chapter describes a violation of Title III if the facts set forth in the complaint are assumed to be true. If the election division determines that:

- (1) even if the facts set forth in the complaint are assumed to be true, there is no violation of Title III; or
 - (2) the person has not complied with section 7 of this chapter;
- the election division shall dismiss the complaint and publish the order dismissing the matter in the Indiana Register.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-14

Persons to whom notices of dismissal provided

Sec. 14. If the election division dismisses a complaint under section 13 of this chapter, the election division shall provide a copy of this determination by certified mail to:

- (1) the person who filed the notice;
- (2) the person alleged to have committed the violation;
- (3) the members of the commission; and
- (4) the attorney general.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-15

Investigation of complaints determined valid

Sec. 15. If the election division determines that the complaint alleges a violation of Title III if the facts alleged in the complaint are assumed to be true and that the person has complied with section 7 of this chapter, the election division shall conduct an investigation under IC 3-6-4.2.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-16

Submission of investigation results to commission; commission report; persons provided copy of report

Sec. 16. The election division, upon completing the investigation, shall submit the results of the investigation to the commission, which shall then issue a written report. The election division shall provide a copy of the report by certified mail to:

- (1) the person who filed the complaint;
- (2) the person alleged to have committed the violation;
- (3) the members of the commission; and
- (4) the attorney general.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-17

Content of report

Sec. 17. The report described in section 16 of this chapter must:

- (1) indicate the date when the complaint alleging the violation was received by the election division;
- (2) contain findings of fact regarding the alleged violation and state whether a violation of Title III has occurred, or appeared to be likely to occur when the complaint was filed;
- (3) state what steps, if any, the person alleged to have committed the violation has taken to correct the violation or to prevent a reoccurrence of the violation;
- (4) suggest any additional measures that could be taken to correct a violation;
- (5) indicate the date when a violation was corrected or is expected to be corrected; and
- (6) provide any additional information or recommendations useful in resolving this complaint.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-18**Hearing; record**

Sec. 18. As required by 42 U.S.C. 15512, at the request of the person filing a complaint, or at the request of a member of the commission, the commission shall conduct a hearing on the complaint and prepare a record of the hearing. A request for a hearing must be filed with the election division not later than noon seven (7) days after the report is mailed under section 16 of this chapter.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-19**Commission action after hearing**

Sec. 19. After concluding the hearing, the commission shall:

- (1) affirm the report;
- (2) amend the report; or
- (3) refer the matter to the election division for further investigation and submission of a subsequent report to the commission.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-20**Dismissal of complaint after determination of no violation**

Sec. 20. As required by 42 U.S.C. 15512, if the commission determines that based on the evidence presented, there is no violation of any provision of Title III or that the person has not complied with section 7 of this chapter, the commission shall dismiss the complaint and publish the order dismissing the matter in the Indiana Register.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-21**Commission to provide remedy if violation found; notification of**

census data advisory committee if legislation required

Sec. 21. As authorized by 42 U.S.C. 15512, if the commission determines that there is a violation of any provision of Title III, the commission shall determine and provide the appropriate remedy if authorized by law to do so. If providing the remedy would require additional or amended Indiana legislation, the commission shall notify the census data advisory committee and provide recommendations regarding the form and content of this legislation.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-22**Civil actions**

Sec. 22. The secretary of state may file a civil action seeking declaratory or injunctive relief to secure or implement a remedy determined by the commission to be appropriate under section 21 of this chapter.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-23**Summary of actions; to whom provided**

Sec. 23. The commission shall forward a written summary of any action taken by the commission under section 20 or 21 of this chapter by certified mail to:

- (1) the person who filed the complaint;
- (2) the person alleged to have committed the violation; and
- (3) the attorney general.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-24**Deadline for making final determination on complaint**

Sec. 24. As required by 42 U.S.C. 15512, the commission shall make the final determination regarding the complaint not later than ninety (90) days after the date the complaint is filed. The person filing the complaint may file a written consent permitting the commission to take a longer period to make the final determination regarding the complaint.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-25**Extension of deadline**

Sec. 25. As required by 42 U.S.C. 15512, if the commission fails to make the final determination regarding the complaint within the period applicable to the complaint under section 24 of this chapter, the complaint shall be resolved not later than sixty (60) days after the deadline applicable to the complaint under section 24 of this chapter.
As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-26**Referral of complaint to arbitrator**

Sec. 26. A complaint described by section 25 of this chapter shall

be resolved by referral to an arbitrator selected jointly by the commission and the person who filed the complaint.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-27

Record and other materials given to arbitrator

Sec. 27. As provided by 42 U.S.C. 15512, the record and other materials from any proceedings conducted by the commission shall be made available for use by the arbitrator.

As added by P.L.209-2003, SEC.13.

IC 3-6-4.5-28

Filing arbitrator's report; content of report

Sec. 28. The arbitrator shall file a report with the election division setting forth the resolution of the complaint. The report must specify the following:

- (1) Whether a violation of Title III has occurred or was about to occur when the complaint was filed.
- (2) The appropriate remedy to correct any violation.
- (3) Whether providing the remedy would require additional or amended Indiana legislation or a civil action for declaratory or injunctive relief.
- (4) Any other information and recommendations necessary to fully provide any appropriate relief under this chapter.

As added by P.L.209-2003, SEC.13.